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**Supreme Court of the United States**

**October Term, 1956**

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**No. 445**

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**LAKE TANKERS CORPORATION,**  
*Petitioner,*  
*against*

**LILLIAN M. HENN, Administratrix,**  
*Respondent.*

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**On Writ of Certiorari to the United States Court of  
Appeals for the Second Circuit**

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**PETITION FOR REHEARING**

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*Counsel for Petitioner.*

**H. BARTON WILLIAMS,**  
*of Counsel*

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**PETITION FOR REHEARING**

Petitioner presents its petition for a rehearing of the above entitled cause, and, in support thereof, respectfully shows:

**Statement of the Case**

Petitioner's tug was push towing petitioner's barge up the Hudson River when the yacht BLACKSTONE, with eleven men on board, collided with the barge, capsized and sank. Ten men were rescued but the eleventh, respondent's decedent, has not been found. Suit was brought in the State Court against petitioner for \$500,000 for the death. Petitioner began this limitation proceeding and eleven claims were filed which aggregate \$259,500. Bond was filed for

the tug and her pending freight in the amount of \$118,500 and, later, for the barge in the amount of \$165,000. The death claimant, respondent in this Court, then allocated her claim \$100,000 to the tug and \$150,000 to the barge, the aggregate of all claims remaining at \$259,500. Respondent then moved to relax the restraining order, and for leave to proceed with her State Court action. Weinfeld, *D. J.*, granted the motion, 137 F. Supp. 311. On appeal the Court of Appeals for the Second Circuit affirmed, two to one. R. 57; 232 F. 2d 573. Upon petition for rehearing *en banc* the full bench granted rehearing and affirmed four to two without opinion. R. 82; 235 F. 2d 783. On certiorari this Court affirmed, three justices dissenting and Mr. Justice Whittaker not participating. 353 U. S. — (1957), 25 U. S. L. Week 4431 (June 10, 1957).

### **Grounds for Rehearing**

#### **I. The facts require a reversal of the decisions below to conform the result to this Court's decision.**

The premise upon which this Court's decision is based is that the fund is "indubitably" sufficient to pay all claims in full. This Court stated in its opinion:

"This is not to say that *concursum* is not available where a vessel owner in good faith believes the fund inadequate, but here there is no contention that there might be further claims; the value of the vessels is undisputed and the claims are fixed; it follows indubitably that the fund is sufficient to pay all claims in full. While it is true the claims as initially filed in the state court exceeded the fund created in the limitation proceeding, still when the admiralty court dissolved the injunction against the state suit these claims, as filed in and limited by stipulation and order of the admiralty court in the limitation proceeding, aggregated less than the fund."

But the fund in this case has not been determined and there is no assurance that it will exceed the aggregate of

the claims. The bonds given by petitioner are merely security to protect the claimants by maintaining the *status quo* pending trial and determination of the fund. *Black Diamond Steamship Corp. v. Robert Stewart & Son Ltd.*, 336 U. S. 386, 398 (1949). The amount of the fund will not be known until, after trial, the Court has determined the *in rem* liability of the vessels because petitioner need put into the fund only the value of the vessel or vessels at fault. *Liverpool etc. Nav. Co. v. Brooklyn Eastern District Terminals*, 251 U. S. 48 (1919); *The Transfer No. 21*, 248 Fed. 459 (2d Cir. 1917); *Standard Dredging Co. v. Kristiansen*, 67 F. 2d 548 (2d Cir. 1933), *cert. den.* 290 U. S. 704; *Harbor Towing Corp. v. Atlantic Mutual Ins. Co.*, 189 F. 2d 409 (4th Cir. 1951).

If the tug alone is held at fault the fund will be \$118,500—obviously inadequate. If barge alone is held, the fund will be \$165,000—also obviously inadequate. Only if both are held at fault will the fund be adequate. Since the amount of the fund cannot be known until after trial the basic premise upon which this Court affirmed is lacking.

Since there are eleven claimants against a fund not indubitably known to be sufficient, petitioner is entitled to hold them in concourse for a binding determination among all as to the alleged *in rem* fault of tug and barge. This is consistent with sound policy just reaffirmed by this Court in *British Transport Commission v. United States*, 353 U. S. —, 25 U. S. Law Week 4426, 4429 (June 10, 1957), where this Court said:

“Since all claims arose out of the same incident they should be determined in a single cause, thus effectuating an ‘economy of trial litigation’ so much desired in judicial administration.”

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## CONCLUSION

**For the foregoing reasons it is respectfully urged that this petition for rehearing be granted, and that upon further consideration the judgment of the Court below be reversed and the restraining order reinstated.**

Dated, New York, June 28, 1957.

EUGENE UNDERWOOD,  
*Counsel for Petitioner.*

H. BARTON WILLIAMS,  
*of Counsel.*

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### Certificate of Counsel

I, EUGENE UNDERWOOD, counsel for the above named petitioner do hereby certify that the foregoing petition for rehearing is presented in good faith and not for delay.

EUGENE UNDERWOOD,  
*Counsel for Petitioner.*